

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.210.641 unprofessional) PROPOSED AMENDMENT
conduct)

TO: All Concerned Persons

1. On January 16, 2009, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation (board) no later than 5:00 p.m., on January 9, 2009, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdrre@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.210.641 UNPROFESSIONAL CONDUCT (1) through (5)(l) remain the same.

~~(m) failing, as a seller's agent, to continue to submit to the seller all offers and counter offers received by the licensee until such time as a pending transaction has been closed or the listing agreement terminates,~~ participate in negotiations as defined in 37-51-102, MCA, unless the seller has waived this obligation in writing. Seller agents are not obligated to continue to actively market the property after an offer has been accepted by the seller unless directed in writing to do so by the seller.

(n) failing, as a seller's agent, to submit to the seller all offers and counter offers received by the licensee until such time as a pending transaction has been closed or the listing agreement terminates unless the seller waives these obligations in writing. Seller agents are not obligated to continue to actively market the property after an offer has been accepted by the seller unless directed in writing to do so by the seller.

(o) failing, as a buyer agent, to participate in negotiations as defined in 37-51-102, MCA, unless the buyer has waived these obligations in writing.

~~(p) failing, as a buyer agent, to submit to the buyer all offers and counter offers until an offer has been accepted~~ or the buyer broker agreement terminates unless the buyer waives these obligations in writing. Buyer agents have no obligation to continue ~~are not obligated~~ to show properties to their clients buyer after

an offer has been accepted unless otherwise directed in writing to do so by the buyer;

(o) through (ac) remain the same but are renumbered (q) through (ae).

~~(ad)~~ (af) failing to respond to a request from the board; ~~or~~

~~(ae)~~ (ag) a licensee shall not engage in or conduct business as a real estate licensee, or advertise as a real estate licensee, or engage in or conduct the business of a real estate licensee at a time when the licensee's real estate license has expired or is on inactive status;

(ah) acting as a buyer agent without a written buyer broker agreement;

(ai) acting as a seller agent without a written listing agreement;

(aj) acting as a dual agent in a transaction if the licensee is a principal;

(ak) acting as a seller agent in a transaction if the licensee is the buyer in the same transaction;

(al) acting as a buyer agent in a transaction if the licensee is the seller in the same transaction;

(am) submitting a competing offer as a principal in a transaction with the licensee's client; or

(an) failing to account for or misappropriation of funds being held in trust.

(6) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

IMP: 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, 37-51-202, 37-51-313, 37-51-314, 37-51-321, 37-51-512, MCA

REASON: The board determined it is reasonable and necessary to amend this rule for clarity and formatting consistency among all sections. The board is adding to unprofessional conduct the failure of buyer and seller agents to participate in negotiations. Negotiation is included in the definitions of broker and salesperson at 37-51-102, MCA, and the board is amending this rule to align with the practice definitions. The board is amending (5)(p) of this rule to achieve consistency between similar requirements on seller agents in (5)(n). The board never intended to have different requirements between seller and buyer agents regarding the necessity to submit offers and counter offers.

It is reasonably necessary to add specific conflict of interest situations the board considers unprofessional conduct. The amendment will put licensees on notice that these acts are a violation of current responsibilities set forth in 37-51-313 and 37-51-314, MCA.

The 2007 Montana Legislature enacted Chapter 502, Laws of 2007 (Senate Bill 153), an act revising professional and occupational licensing laws. The bill was signed by the Governor on May 16, 2007, and became effective October 1, 2007. Section 24 of the bill was codified at 37-51-324, MCA, to provide penalties for noncompliance by real estate brokers and property managers with trust account provisions. Following a review of all trust account rules, the board is adding (5)(an) to reinforce 37-1-316(14), MCA, and to implement the legislation by adding the failure to account for or the misappropriation of trust funds as unprofessional conduct.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., January 26, 2009.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.realestate.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsdrre@mt.gov, or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. Barb McAlmond, program manager, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
CINDY WILLIS, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 15, 2008